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IN THE

Supreme Court of the United States

TOWN OF MOUNT PLEASANT,

Petitioner,

v.

LEGION OF CHRIST, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

REPLY BRIEF

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CORPORATE DISCLOSURE STATEMENT

Petitioner's Corporate Disclosure Statement was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that Statement.

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INTRODUCTION

The nationally significant issue that is raised in the Petition for a Writ of Certiorari (the "Petition") submitted by Petitioner Town of Mount Pleasant (the "Town") is the ability of a municipality to use its police power to preserve its tax base through zoning and land use controls. This is a fundamental municipal police power issue that (a) requires direction from this Court to provide uniformity in the law throughout the nation; and (b) has an impact on every municipality and real estate taxpayer. The Brief in Opposition (the "Opposition Brief") of Respondent Legion of Christ, Inc. (the "Legion") attempts to have this Court avoid defining the national law on this important issue by making untenable arguments.

The Court of Appeals of the State of New York (the "Court of Appeals") rejected the Town's fiscal zoning law without citing any legal authority. Such decision is contrary to the holdings of other state courts of last resort and a United States Court of Appeals. This case clearly presents an important question of federal law regarding the Fourteenth Amendment's restriction on a municipality's police power.

Accordingly, this Court needs to address this issue in order for there to be uniformity in the law as the Court of Appeals Decision, in twelve (12) words, takes away a recognized, fundamental police power of municipalities.

RESPONSE TO THE LEGION'S ARGUMENTS FOR DENYING THE PETITION

As discussed below, the Legion's arguments in support of this Court denying the Petition are without merit, are smokescreens and should not be the basis for this Court refusing to address the important issue at bar.

A. *This Court Has Jurisdiction to Hear This Appeal*

The Legion argues that this Court does not have jurisdiction to hear this appeal because the opinion of the Court of Appeals dated June 6, 2006 (the "Court of Appeals Decision") was based exclusively upon an adequate, independent ground of New York

State law. It, however, has misconstrued the Court of Appeals Decision.

As a preliminary matter, the Legion took out of context the Court of Appeals' finding that the Legion had a dispositive state-law defense. Such statement was made when the Court of Appeals affirmed the Supreme Court of the State of New York, Appellate Division, Second Department's (the "Appellate Division") denial of attorneys' fees in connection with the Legion's claim that the Town violated the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"). Specifically, the Court of Appeals noted that:

> [w]hen this action was brought, RLUIPA had not even been enacted, and the Legion then had available to it the state-law defense that we have found dispositive. The provision of state law on which this case turns is not a state counterpart to RLUIPA, but a local zoning code. It would distort reality to hold that the Legion is the 'prevailing party' in an RLUIPA case.

Petition, Appendix at p. 7a.

The Legion is trying to simplify this case by arguing that the Court of Appeals Decision solely rests on the interpretation of the Zoning Code of the Town of Mount Pleasant (the "Town Zoning Code"). Importantly, however, the Court of Appeals stated that the reason behind its interpretation was that "KEEPING PROPERTY IN TAXPAYING HANDS IS NOT A LEGITIMATE PURPOSE OF ZONING." Petition, Appendix at p. 7a (emphasis added). In other words, the Court of Appeals determined that fiscal zoning is not permissible in New York State, even though it is permissible in other states.

Such determination is not dictum. Rather, it is the rationale for the Court of Appeals' holding that the Legion's use of its property (the "Property") complied with the Town Zoning Code. The Court of Appeals did not believe that the Town could prohibit the Legion's use of the Property because the Legion is

a tax-exempt entity.[1] It disregarded the expressed intent of the Office Business-Corporate Education Zone District (the "OB-CE District") and the Town's Comprehensive Master Plan (the "Master Plan") when it made its determination.

The Legion's reliance on *Black v. Cutter Laboratories*, 351 U.S. 292 (1956) and *Coleman v. Thompson*, 501 U.S. 722 (1991) is misplaced. Unlike *Cutter Laboratories*, the issue presented herein does not involve just the interpretation of the Town Zoning Code without any substantial federal question being presented. The primary issue herein is whether fiscal zoning is permissible, which turns on the Fourteenth Amendment. This issue needs to be determined in order for there to be uniformity in the law throughout the land.

Coleman is similarly distinguishable. In *Coleman*, this Court determined that it could not review a question of federal law decided by a state court if the state court's decision rests on a state law ground that is sufficient to support the judgment. In this case, the Court of Appeals' rejection of fiscal zoning resulted in its determination that the Legion's use complied with the Town Zoning Code. Said another way, if the Court of Appeals had determined that fiscal zoning was a legitimate act of the municipality, it would have never had to address the application of the Town Zoning Code to the Legion's use of the Property. Accordingly, the Court of Appeals Decision does not rest on a state law ground that is independent of the federal question of the permissibility of fiscal zoning.

B. *The Fiscal Zoning Issue Herein Was Presented to the State Courts and Was the Basis of the Court of Appeals Decision*

The Legion contends that this Court should not review the Fourteenth Amendment issue raised in the Petition because the Town did not raise before the state courts the constitutional claim or the federal question regarding the Fourteenth Amendment's potential restriction on a municipality's police power. It also

[1] There are many other zone districts in the Town in which tax-exempt entities are permitted.

contends that the Court of Appeals did not address such issue or federal question. Such contention is erroneous.

The primary issue in this case has always been the legal authority for the Town to engage in fiscal zoning and keep the Property on the tax rolls in accordance with the Master Plan and the Town Zoning Code. It has consistently been presented to the state courts. For example, in its decision dated November 29, 1999 (the "1999 Appellate Division Decision"), the Appellate Division discussed the Town Board of the Town of Mount Pleasant's (the "Town Board") intent in approving International Business Machines Corporation's ("IBM") proposed corporate technical institute (the "IBM Institute") on the Property, which was to expand the tax base. Petition, Appendix at p. 30a

The Court of Appeals also specifically addressed the issue when it stated that "keeping property in taxpaying hands is not a legitimate purpose of zoning." Petition, Appendix at p. 7a.

In its Opposition Brief, the Legion admitted that this issue was presented to the state courts. Specifically, the Legion argued that the Court of Appeals' fiscal zoning holding was one of the reasons why it rejected the Town's contentions below. *See* Opposition Brief at p. 9.

This case is distinguishable from *Adams v. Robertson*, 520 U.S. 83 (1997). In *Adams*, the highest state court was silent on the federal question raised before this Court. *In the instant case, the Court of Appeals made a specific finding about the ability of a municipality to consider its tax base when using its zoning and land use controls, which is the constitutional issue and federal question set forth in the Petition.*

In *Bankers Life and Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988), this Court declined to address the constitutional issue therein because it was not raised in the state courts below. This case is distinguishable because, as discussed above, the issues raised herein were presented to the state courts below and were specifically addressed by the Court of Appeals. Accordingly, the Court of Appeals decided the constitutional issue and federal

question and gave this Court its opinion on such issue and question.

C. *The Town Is Not Seeking Protection Under the Fourteenth Amendment*

The Legion argues that the Town cannot assert rights under the Fourteenth Amendment. It misunderstood the Town's argument.

The Town is not seeking protection under the Fourteenth Amendment. The Town is simply asking this Court to review whether the Fourteenth Amendment prohibits a municipality from using its police power to preserve its tax base for the benefit of all residents and businesses through zoning and land use controls.

Despite the Legion's contentions, the Town is not seeking an advisory opinion from this Court on the issue of taxes based on fiscal zoning. The Court of Appeals specifically addressed the issue, which was determinative on the Legion's use of the Property.

Accordingly, this case presents a question of constitutional law regarding fiscal zoning that this Court should consider.

D. *The Court of Appeals Decision Conflicts with the Holdings of Other State Courts of Last Resort and a United States Court of Appeals*

The Legion contends that the cases the Town cited in support of the Petition are uniquely state and local in nature and, therefore, simply reflect the different states' views on the proper purpose of zoning. It further contends that such matters are for the determination by the state courts under state law and principles of the state constitution rather than federal law. Such contentions are erroneous. Fiscal zoning is a national issue that impacts all municipalities and taxpayers and requires uniformity.

The Legion ignores the fact that this Court and other federal courts have considered local zoning and other land use regulations. For example, this Court has considered whether local zoning and land use controls violated the United States Constitution in numerous cases, including *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926) and *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

United States Courts of Appeals have also considered such issue on many occasions. *Koscielski v. City of Minneapolis*, 435 F.3d 898 (8th Cir. 2006); *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643 (10th Cir. 2006); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Mount Elliott Cemetery Ass'n v. City of Troy*, 171 F.3d 398 (6th Cir. 1999).

Accordingly, it is entirely proper for federal courts to consider the validity of local zoning and land use regulations, including the issue of whether they are valid under the United States Constitution.

The Court of Appeals Decision held that fiscal zoning is improper in New York State. Such determination conflicts with the holdings of other state courts of last resort and a United States Court of Appeals, which have determined that the preservation of a local tax base is a legitimate purpose of zoning and can be considered by a municipality when making zoning determinations. *See* Petition at pp. 10-11.

Despite the Legion's contentions, the above holdings are not dictum. They specifically address what the proper considerations are when a municipality adopts a zoning or land use control. In addition, differences among fact patterns and local ordinances are irrelevant to whether fiscal zoning is a proper consideration in the first instance.

A leading commentator on Court of Appeals' decisions, Professor David D. Siegel, characterized the statement of the Court of Appeals as "a broad and perhaps potentially controversial statement." New York State Law Digest No. 561 (September 2006).

This Court, therefore, should review the Court of Appeals Decision in order to resolve this conflict among the state courts of last resort and a United States Court of Appeals.

E. *The Court of Appeals Decision Involves a Question of Federal Law*

The Legion argues that no federal question is presented herein because the Court of Appeals Decision held only that the Legion's use of its Property complies with the Town Zoning Code.

Again with this simplistic approach, the Legion fails to recognize that the Court of Appeals specifically rejected the Town's

use of fiscal zoning, which implicates Fourteenth Amendment considerations and the Town's use of its police power.

As discussed above, the holdings of other state courts of last resort and one United States Court of Appeals on the fiscal zoning issue cannot be disregarded on the grounds that their holdings are dictum or fact-specific.

Other state courts have reached different conclusions, including the determinations that fiscal zoning is only proper in some instances, rezoning that would increase the tax base is not a legitimate objective of zoning and fiscal zoning is an improper zoning consideration. *See* Petition at pp. 13-14.

Accordingly, this Court should review the issues presented herein in order to create uniformity in the law of the land as to whether fiscal zoning is proper under the Fourteenth Amendment.

Response To Alleged Misstatements Of Fact And/Or Law And Material Omissions In The Petition

The Legion contends that there were misstatements of fact and/or law in the Petition. The Legion is mistaken.

A. *The Town of Mount Pleasant Planning Board's Final Environmental Impact Statement Does Not Alter the Town's Intent in the Creation of the OB-CE District*

The Legion contends that the Town's assertion that it created the OB-CE District for business use with the intention of preserving and stabilizing the tax base is contradicted by Section 4.11 of the Town's Final Environmental Impact Statement (the "FEIS") adopted at the time it created the OB-CE District. Such contention is erroneous.

On June 28, 1983, the Town Board rezoned the Property to the OB-CE District.

The FEIS was not adopted at the time the Property was rezoned. Rather, it was adopted in October 1983 by the Town of Mount Pleasant Planning Board (the "Planning Board") in connection with IBM's proposed IBM Institute on the Property.

The FEIS does not negate the Town Board's clear intent that is demonstrated in the legislative history for the OB-CE

District. For example, one of the purposes of the OB-CE District was the Town's:

> desire to provide the appropriate physical setting and opportunity for private enterprise to adequately advance, support, serve and benefit the technical and physical education of the employees of major corporations by providing support facilities and an environment conducive to such education and physical training.

In the 1999 Appellate Division Decision, the Appellate Division noted that in granting site plan approval to IBM:

> the Town Board found that that use would foster the goals set forth in the Town Master Plan to encourage office development in 'selected locations . . . *to expand the Town's tax base to help residential property owners in the financing of the public facilities and services needed by the Town's residential population.*'

Petition, Appendix at p. 30a (emphasis added).

Section 4.11 of the FEIS was intended to consider the fiscal implications of the IBM Institute. Although the Planning Board noted that the exact amount of real estate taxes payable might be impacted by abatements or exemptions, it also determined that the tax contribution of the IBM Institute can be viewed as a net gain to the Town's financial resources.

B. ***The Special Permit Requirement for Certain Uses Was Determined by the Appellate Division***

The Legion argues that the Town's position regarding special permit requirements is inconsistent. The Legion, however, fails to mention the procedural history of this case which resulted in the Town requiring the Legion to obtain a special permit.

When the Town commenced this action, it alleged in its Verified Complaint dated September 5, 1997, that the Legion's religious use of the Property was incompatible with the goal of the OB-CE District to preserve and maintain the Town's tax base, with the Master Plan and with the permitted uses in the Town Zoning Code.

In the 1999 Appellate Division Decision, the Appellate Division held that uses previously permitted by special permit were still permissible by special permit in the OB-CE District. The Appellate Division determined that the Legion might have been using the Property in a manner similar to a seminary or a private college, which was not permissible without a special permit.

After the Appellate Division rendered the 1999 Appellate Division Decision, the Town complied with it by requiring the Legion to obtain a special permit since the Legion's use of the Property constituted a seminary and/or a private college. The Legion refused to do so.

The Town's compliance with the 1999 Appellate Division Decision does not negate the Town's intention when it created the OB-CE District. It also does not change the Town's position that the Legion's use of the Property is impermissible because, unlike IBM, the Legion is a tax-exempt entity. Such position is not contrary to the principle that zoning regulations can regulate land uses but not land users because it is the essence of fiscal zoning (*i.e.*, preservation of the tax base through zoning and land use controls).

C. ***The 1993 Amendment to the OB-CE District Is Consistent with the Town's Intent When It Created the OB-CE District***

The Legion contends that the 1993 amendment to the OB-CE District (the "1993 Amendment") is important because it allegedly modified the purposes of the OB-CE District. The 1993 Amendment, however, is consistent with the Town's intent when it created the OB-CE District.

As a preliminary matter, the Legion misquotes the letter dated June 1, 1992 from Alan R. Wolfert to the Town Board. The letter simply discusses the reduced attendance at IBM's classes and that "IBM would like to promote greater utilization of the facility."

As revised by the 1993 Amendment, one of the purposes of the OB-CE District is:

> the desire to provide office, housing, dining and conference facilities in an appropriate physical setting to adequately advance, support, serve and benefit the

education of the employees of major corporations and others.

Such purpose is consistent with the Town's intent when it created the OB-CE District because it enabled IBM to fully utilize the IBM Institute *and kept the Property on the tax rolls.*

The Legion also contends that it is one of the "others" referred to in the 1993 Amendment. As the Town has maintained throughout this litigation, the Legion's use of the Property was different than IBM's use of the Property. As determined by the Appellate Division, such different use required the Legion to obtain a special permit.

In addition, the Legion's use of the Property fails to comply with the Master Plan and the Town Zoning Code because the Legion is tax-exempt.

D. ***The Town Has Properly Stated the Trial Court's Findings***

The Legion argues that the Town has misstated the findings of the Supreme Court of the State of New York, County of Westchester (the "Trial Court") because it "characterized" the Trial Court's findings that the Legion's use of the Property was lawful because it was not being used as a seminary or private college.

The Legion overlooked the Trial Court's Judgment filed February 4, 2004, which ordered, adjudged and declared that the Legion's "use of the Property for training, education and conferences for lay people, priests, ordained members of [the Legion's] Order and Brothers in Formation is not that of a private college or a seminary." Petition, Appendix at p. 13a.

CONCLUSION

For the reasons set forth above and in the Petition, it is respectfully requested that this Court grant a petition for a writ of certiorari to review this important case of national impact.

Respectfully submitted,

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